

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 FRANCINE A. MCGEE,

9 Plaintiff(s),

10 v.

11 CITIMORTGAGE, et al.,

12 Defendant(s).
13
14

2:14-CV-335 JCM (CWH)

15 **ORDER**

16 Presently before the court is a motion to dismiss filed by defendant CitiMortgage, Inc.
17 (“CMI”). (Doc # 4). Plaintiff Francine McGee filed a response in opposition (doc. # 20), and CMI
18 filed a reply (doc. # 23).

19 Also before the court is a motion to dismiss filed by defendant Nationstar Mortgage, LLC
20 (“Nationstar”). (Doc. # 5). Plaintiff filed a response in opposition (doc. # 21), and Nationstar filed
21 a reply (doc. # 26).

22 **I. Background**

23 Plaintiff purchased real property located at 6583 Mermaid Circle in Las Vegas, Nevada in
24 September of 2006 for \$432,500.00. (Doc. # 1-1 at p. 5-6). Plaintiff secured financing from PHH
25 Mortgage Company with first and second mortgages. (Doc. # 1-1 at p. 6). The first mortgage was
26 for \$346,000.00 and was secured by a deed of trust encumbering the property. (Doc. # 1-1 at p. 6).

27 . . .
28

1 In October of 2008 CMI was assigned the interest in the deed of trust. (Doc. # 5 at p. 2). CMI
 2 then assigned the interest to defendant Federal National Mortgage Association (“Fannie Mae”) on
 3 April 26, 2010. (Doc. # 5 at p. 2).

4 First American Title was the original trustee named in the deed of trust. (Doc. # 101 at p. 6).
 5 In October 2009, defendant Cal-Western Reconveyance Corporation (Cal-Western) was substituted
 6 as trustee. (Doc. # 1-1 at p. 6, doc. # 5 at p. 2). On October 22, 2009, Cal-Western recorded a notice
 7 of default with the Clark County recorder. (Doc. # 1-1 at p. 7, doc. # 5 at p. 2). On April 28, 2010,
 8 a foreclosure sale was held and the title was conveyed to Fannie Mae by the trustee’s deed upon sale
 9 for \$357,705.43. (Doc. # 21 at p. 2).

10 Fannie Mae filed a notice of recession of trustee’s deed upon sale with the Clark County
 11 recorder on November 7, 2011. (Doc. # 1-1 at p. 8). The trustee’s deed was rescinded by Cal-
 12 Western due to “inadvertence and mistake” and Fannie Mae “did not accept delivery of the Trustee’s
 13 Deed Upon Sale.” (Doc. # 4 at p. 2, doc. # 5 at p. 2).

14 Plaintiff filed a complaint in the Clark County district court and defendants removed. (Doc.
 15 # 1). Plaintiff’s suit seeks to quiet title on the property and obtain declaratory relief that the property
 16 is vested in her “free and clear of all claims of [d]efendants.” (Doc. # 1-1 at p. 9).

17 CMI and Nationstar have moved to dismiss for failure to state a claim upon which relief can
 18 be granted. (Docs. # 4, 5).

19 **II. Legal Standard**

20 A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which relief can
 21 be granted.” Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide “[a] short and plain
 22 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell*
 23 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual
 24 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the elements
 25 of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). “Factual
 26 allegations must be enough to rise above the speculative level.” *Twombly*, 550 U.S. at 555. Thus, to
 27 survive a motion to dismiss, a complaint must contain sufficient factual matter to “state a claim to
 28

1 relief that is plausible on its face.” *Iqbal*, 556 U.S. at 678 (citation omitted).

2 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply when
3 considering motions to dismiss. First, the court must accept as true all well-pled factual allegations
4 in the complaint; however, legal conclusions are not entitled to the assumption of truth. *Id.* Mere
5 recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice.
6 *Id.* Second, the court must consider whether the factual allegations in the complaint allege a plausible
7 claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff's complaint alleges facts
8 that allow the court to draw a reasonable inference that the defendant is liable for the alleged
9 misconduct. *Id.* at 678.

10 Where the complaint does not permit the court to infer more than the mere possibility of
11 misconduct, the complaint has “alleged – but not shown – that the pleader is entitled to relief.” *Id.*
12 (internal quotations omitted). When the allegations in a complaint have not crossed the line from
13 conceivable to plausible, plaintiff's claim must be dismissed. *Twombly*, 550 U.S. at 570.

14 **III. Discussion**

15 Defendants argue that plaintiff's complaint has failed to state a claim for which relief can be
16 granted because as a matter of law plaintiff is the title owner of the property and the defendant's deed
17 of trust remains in effect. (Doc. # 4 at p. 5-6, doc. # 5 at p. 4). Plaintiff argues that because she is
18 seeking a judicial determination of the validity of any interests or encumbrances, the case must be
19 allowed to move forward. (Doc. # 20 at p. 3, doc. # 21 at p. 4).

20 In Nevada, the rescission of a contract generally restores the parties to the status quo. *See*
21 *Mackintosh v. California Federal Sav. & Loan Ass'n*, 935 P.2d 1154, 1163. “To place a party in
22 status quo means to place such party in the same position as he was situated in at the time of the
23 execution of the contract.” *Id.* (quoting 17A C.J.S. *Contracts* § 438 (1963)).

24 Cal-Western and Fannie Mae agreed to rescind the trustee's deed upon sale. Therefore, the
25 parties returned to the point they were at before the execution of the trustee's deed upon sale. As
26 such, the encumbrance on the property remains as it was and plaintiff's claim for quiet title fails.

1 Plaintiff is also seeking declaratory relief that the rescission somehow extinguished
2 defendants' interest in the property. Plaintiff has not supported this argument with any points or
3 authorities as required by the local rules, and the court has not found any. *See* LR 7-2(d) ("The
4 failure of an opposing party to file points and authorities in response to any motion shall constitute
5 a consent to the granting of the motion."). Accordingly, the court will grant defendants' motions to
6 dismiss.

7 Accordingly,

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that CMI's motion to dismiss
9 (doc. # 4) be, and the same hereby is, GRANTED.

10 IT IS FURTHER ORDERED that Nationstar's motion to dismiss (doc. # 5) is GRANTED.

11 DATED July 25, 2014.

12
13 
14 **UNITED STATES DISTRICT JUDGE**